

KATZ BANKS KUMIN LLP

Rebecca Peterson-Fisher (State Bar No. 255359)
235 Montgomery Street, Suite 665
San Francisco, CA 94104
Tel: (415) 813-3260
Fax: (415) 813-2495
Email: peterson-fisher@katzbanks.com

Jessica Westerman (*pro hac vice* application
forthcoming)

11 Dupont Circle, Suite 600
Washington, D.C. 20036
Tel: (202) 299-1140
Fax: (202) 299-1148
Email: westerman@katzbanks.com

THE VILLEGAS LAW FIRM, APC

Virginia Villegas (State Bar No. 179062)
1388 Sutter Street, Suite 903
San Francisco, CA 94109
Tel: (415) 989-8000
Fax: (415) 989-8028
Email: virginia@e-licenciados.com

**COMMUNITY LEGAL SERVICES IN EAST
PALO ALTO**

Jennifer Smith (State Bar No. 319852)
1861 Bay Road
East Palo Alto, CA 94303
Tel: (650) 204-9065
Fax: (866) 688-5204
Email: jsmith@clsepa.org

Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELEAZAR HERRERA, on behalf of all those similarly
situated to him,

Plaintiffs,

vs.

ONTRAC LOGISTICS, INC., a Delaware corporation;
JESUS FERNANDO GONZALEZ, an individual;
LEONARDO CIDRAO DE ARAUJO, an individual;
and DOES 1 THROUGH 100, inclusive,

Defendants.

Case No.: 3:25-CV-00022-RFL

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF,
RESTITUTION, AND DAMAGES
FOR VIOLATIONS OF THE
CALIFORNIA LABOR CODE,
WAGE ORDERS, PRIVATE
ATTORNEYS GENERAL ACT, AND
BUSINESS AND PROFESSIONS
CODE**

Complaint Filed: October 15, 2024
Removed: January 2, 2025

1 Plaintiff Eleazar Herrera, on behalf of himself and all others similarly situated, hereby files
2 this Class and Representative Action Complaint against Defendants OnTrac Logistics, Inc.
3 (“OnTrac”); Jesus Fernando Gonzalez, an Individual; Leonardo Cidrao De Araujo, an Individual;
4 and Does 1 through 100 (hereinafter referred to collectively as “Defendants”).

5 **INTRODUCTION**

6 1. This is a class action for damages, penalties, and injunctive relief on behalf of
7 delivery drivers who were misclassified as independent contractors and required to incur
8 significant business expenses without reimbursement, required to work overtime hours without
9 overtime premium pay, not provided with legally-compliant meal and rest breaks, not provided
10 with accurate wage statements, and not paid all wages owed upon separation from employment, in
11 violation of California law and the applicable Wage Orders.

12 2. OnTrac is a last-mile parcel delivery service that delivers packages to residential
13 customers across 35 states, including California, and Washington, D.C. According to publicly
14 available information, OnTrac is a transcontinental delivery service which operates a “hub-and-
15 spoke” network of more than 102 locations and 18 sort centers throughout the United States.
16 OnTrac hires individuals, such as Defendants Gonzalez and Cidrao De Araujo, to oversee the
17 employees, such as Plaintiff, who scan, sort, load, and deliver OnTrac’s packages (“delivery
18 drivers” or “drivers”). OnTrac delivery drivers nationwide routinely deliver packages that originate
19 out-of-state and travel in interstate commerce.

20 3. Plaintiff was a non-exempt hourly employee who worked for Defendants Gonzalez
21 and Cidrao De Araujo as a delivery driver at OnTrac’s South San Francisco sort center and
22 throughout his assigned delivery areas, including Richmond, CA, and San Francisco, CA. Through
23 his employment, Plaintiff routinely delivered packages which originated out-of-state and traveled in
24 interstate commerce.

25 4. Throughout his employment with Defendants Gonzalez and Cidrao De Araujo,
26 Plaintiff was jointly employed by OnTrac. OnTrac exercises extensive and continuous control over
27 the manner in which delivery drivers conduct their work, the terms and conditions of their
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1 employment, and their work conditions. OnTrac’s control includes, but is not limited to,
2 determining delivery areas to be assigned to drivers or groups of drivers, effectively determining
3 their work assignments and daily schedules; requiring drivers to lease vans bearing the OnTrac logo
4 or to display the OnTrac logo on their personal vehicles; requiring drivers to purchase and wear
5 OnTrac uniforms; requiring drivers to scan packages using a scanner rented to delivery drivers
6 connected to OnTrac’s system, and/or to purchase a telephone and application to scan packages and
7 map and track package deliveries; processing driver job applications; hiring and firing drivers; and
8 controlling drivers’ ability to take meal and rest breaks.

9 5. Defendants Gonzalez and Cidrao De Araujo are responsible for overseeing various
10 aspects of delivery drivers’ work, including but not limited to recruiting and supervising drivers;
11 enforcing OnTrac’s directives, including but not limited to that drivers wear OnTrac uniforms, drive
12 OnTrac vans, and/or display the OnTrac logo on their personal vehicles; and taking corrective
13 action where deemed necessary. Defendants Gonzalez and Cidrao De Araujo report to OnTrac.

14 6. Plaintiff alleges that Defendants violated the Labor Code, the Industrial Welfare
15 Commission (“IWC”) Wage Order 9-2001, and the Business and Professions Code §§17200, *et*
16 *seq.* (“Unfair Competition Law” or “UCL”).

17 7. Plaintiff seeks full compensation on behalf of himself and all others similarly
18 situated for all unpaid wages, unpaid overtime, denied or non-compliant meal periods, denied or
19 non-compliant rest periods, inaccurate wage statements, and waiting time penalties. Plaintiff
20 further seeks penalties on behalf of himself and the proposed Class for Defendants’ violations of
21 the Labor Code and IWC Wage Order 9-2001. Plaintiff also seeks declaratory and injunctive
22 relief, including restitution. Finally, Plaintiff seeks reasonable attorneys’ fees and costs under the
23 Labor Code and Code of Civil Procedure § 1021.5.

24 **PARTIES**

25 8. Plaintiff Eleazar Herrera was employed by Defendants Gonzalez and OnTrac from
26 approximately 2018 to June 2022 and by Defendants Cidrao De Araujo and OnTrac from
27 approximately July 2022 to September 2023 as a delivery driver at OnTrac’s South San Francisco
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1 sorting center located at 250 Utah Street, South San Francisco, CA 94080. Plaintiff is a resident of
2 San Francisco County, California. At all relevant times, he was an “employee” as that term is used
3 in the California Labor Code and in IWC Wage Orders regulating wages, hours, and working
4 conditions.

5 9. Defendant OnTrac is a corporation headquartered in Delaware that does business in
6 the State of California. OnTrac is and was engaged in the business of last-mile parcel delivery.

7 10. Defendant Jesus Fernando Gonzalez is an individual who does business in the State
8 of California. Defendant Gonzalez is and was engaged in the business of last-mile parcel delivery.

9 11. Defendant Cidrao De Araujo is an individual who does business in the State of
10 California. Defendant Cidrao De Araujo is and was engaged in the business of last-mile parcel
11 delivery.

12 12. Defendants have done business under the laws of California, have had places of
13 business in California, and have employed Class Members, including Plaintiff, to perform job
14 duties in this judicial district. They are “persons” as defined in California Labor Code § 18 and
15 California Business and Professions Code § 17201. They are also “employers” as that term is used
16 in the California Labor Code and the IWC Wage Orders regulating wages, hours and working
17 conditions. As employers of Plaintiff and the Class throughout the relevant time period,
18 Defendants, and each of them, are either solely or jointly and severally liable for back pay and
19 other economic damages and statutory penalties owed to Plaintiff and the Class and to the Labor
20 Workforce Development Agency (“LWDA”).

21 13. On information and belief, Defendants are liable to Plaintiff and the Class as joint
22 employers. Defendants are all jointly and severally liable for the back pay and other economic
23 damages, including statutory penalties, owed to Plaintiff and Class Members under common law
24 and by statute.

25 14. Throughout this Complaint, any reference to “Defendants” is intended to refer to all
26 named Defendants jointly and to all Doe defendants who are entities involved in last-mile parcel
27 delivery for OnTrac.

JURISDICTION

15. This Court has jurisdiction over Plaintiff's and the Class Members' claims for unpaid straight-time, overtime, and double time wages; for meal and rest period violations; for failure to provide accurate wage statements; for failure to maintain time and payroll records; for unreimbursed necessary business expenditures; for waiting time penalties; and for applicable penalties pursuant to the California Labor Code, including Cal. Lab. Code §§ 210, 225.5, 226.3, 226.8, 558, 1174.5, 1197.1, 1199, 2802, and subsection 20 of IWC Wage Order 9-2001.

16. This Court has jurisdiction over Plaintiff's and the Class Members' claims for injunctive relief, including restitution of earned wages and benefits, which are the money and property of Plaintiff and the Class Members, arising from Defendants' unfair competition under Business & Professions Code §§ 17203 and 17204.

VENUE

17. Venue as to Defendants is proper in Contra Costa County pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Defendants employed Plaintiff to perform job duties in Contra Costa County, such that Contra Costa County is the county in which his employment contract was to be performed. Moreover, Plaintiff was injured in Contra Costa County in that he was required to make unreimbursed business expenditures and denied legally-compliant meal and rest breaks in Contra Costa County.

FACTUAL ALLEGATIONS

18. Defendants hired Plaintiff and Class Members to scan, sort, and load packages at OnTrac sort centers, then deliver those packages to OnTrac customers within a designated delivery area. Plaintiff and Class Members generally worked at least 5 days per week for 10 to 13 hours per day, and routinely delivered packages that originated out-of-state and traveled in interstate commerce.

19. As OnTrac states on its website, "[t]he OnTrac delivery network serves 35 states and Washington, D.C." See <https://www.ontrac.com/> (accessed Jan. 21, 2025).

1 20. According to OnTrac’s website, OnTrac provides “faster, reliable residential e-
2 commerce parcel delivery” by “helping leading retailers and direct-to-consumer brands with faster,
3 reliable last-mile delivery solutions[.]” *See* [https://www.ontrac.com/residential-e-commerce-](https://www.ontrac.com/residential-e-commerce-delivery/)
4 [delivery/](https://www.ontrac.com/residential-e-commerce-delivery/) (accessed Jan. 21, 2025).

5 21. According to OnTrac’s website, OnTrac “is the first transcontinental carrier of
6 choice for last-mile e-commerce deliveries that helps shippers build a competitive advantage
7 through faster delivery times, lower costs, coast-to-coast coverage, and reliable on-time
8 performance,” and “shippers can take advantage of [their] coast-to-coast network. *Id.*

9 22. According to OnTrac, it partners with “some of the world’s largest retailers” and its
10 “Brands You Know” including Temu, Lulus, SavageFenty, Shein, Fabletics, The RealReal, Hot
11 Topic, Nuts.com, and Bodybuilding.com. *See* <https://www.ontrac.com/> (accessed Jan. 21, 2025) &
12 <https://www.ontrac.com/residential-e-commerce-delivery/> (accessed Jan. 21, 2025).

13 23. OnTrac last-mile delivery drivers routinely deliver packages to customers that were
14 originally shipped from outside the states the drivers are delivering to.

15 24. But for the work of OnTrac last-mile delivery drivers, the packages they handle
16 which have been sent through interstate commerce would not reach their final destination.

17 25. Plaintiff and Class Members, like OnTrac last-mile delivery drivers nationally,
18 routinely deliver packages to customers that were originally shipped from outside the state of
19 California.

20 26. According to OnTrac, it “help[s] retailers and shippers meet their customers’
21 expectations of fast, reliable last-mile delivery, while helping them save money, ensure capacity,
22 and build flexibility within their supply chains.” *See* <https://www.ontrac.com/faq/> at “Why do
23 companies ship with OnTrac?” (accessed Jan. 21, 2025).

24 27. According to OnTrac, their “hub-and-spoke delivery network reaches 70% of the
25 U.S. population across 35 states and Washington, D.C. and enhances shippers’ ability to meet
26 growing demand in the consumer e-commerce delivery market. *Id.*

1 28. Plaintiff's partner often assisted him in performing his job duties, even though she
2 was not directly contracted by OnTrac or its agents. Other delivery drivers likewise were assisted
3 by members of their own families, some of whom were minors, in performing their job duties.
4 Defendants were aware delivery drivers' family members assisted them with their work and
5 suffered and permitted those family members to perform work for Defendants.

6 29. Defendants typically paid Plaintiff and Class Members either a daily rate plus an
7 additional amount per delivery stop, or no daily rate and higher amount per stop. Plaintiff was paid
8 \$1.75 per package delivered when employed by Defendants Gonzalez and OnTrac, and a base rate
9 of \$150.00 per day and \$1.19 per package delivered when employed by Defendants Cidrao De
10 Araujo and OnTrac. Plaintiff's partner and the other adult and minor family members who assisted
11 delivery drivers in performing their duties did not receive any compensation at all for their work.

12 30. Defendants were and are responsible for controlling the terms and conditions of
13 Plaintiff's and the Class Members' employment and for directing and supervising their work.

14 31. During the relevant statutory period, Plaintiff and Class Members were non-exempt
15 employees of Defendants who worked hours constituting both regular "straight-time" hours and
16 "overtime" hours as those terms are defined in the California Labor Code and IWC Wage Order 9-
17 2001. Plaintiff and Class Members worked these hours with Defendants' knowledge, consent, and
18 acquiescence, performing tasks that were assigned to them.

19 32. At all times relevant herein, Defendants voluntarily and knowingly misclassified
20 Plaintiff and continue to misclassify other similarly situated delivery drivers as independent
21 contractors for the purpose of evading their legal obligations as employers.

22 33. Defendants require drivers to pay for package insurance for the purpose of covering
23 losses to OnTrac in the event of package theft from delivery vehicles.

24 34. Once a driver is hired, Defendants control all aspects of their work. For example,
25 Defendants assign a delivery area to the driver and require them to deliver all of their assigned
26 packages before finishing work for the day, effectively determining the driver's work schedule.

1 Defendants also require drivers to sort the packages assigned to them on-site at the OnTrac sorting
2 center.

3 35. Defendants require drivers to pay rent for proprietary devices to scan packages
4 and/or to purchase a telephone to scan packages and pay for an application to map and track
5 package deliveries. Defendants Gonzalez and OnTrac required Plaintiff to pay approximately \$100
6 per month to rent a scanner and/or a telephone, which was deducted from his pay. When Plaintiff
7 worked for Cidrao De Araujo, Plaintiff paid approximately \$350 to \$400 to purchase a telephone to
8 scan packages and paid approximately \$12 per month for the mapping application.

9 36. Defendants require drivers either to use a scanner which connects to OnTrac's
10 software system or to purchase a telephone to scan packages and an application to map and track
11 deliveries.

12 37. Plaintiff and Class Members were required to deliver every package they picked up
13 in the morning on the same day, typically over 200 packages. Upon information and belief, the
14 OnTrac package-scanning app "closes" at 8:00 pm, making it impossible for drivers to log
15 deliveries made after that time.

16 38. Due to the time pressure to complete their routes determined by Defendants, Plaintiff
17 and other delivery drivers were unable to take legally-compliant meal and rest breaks and/or were
18 discouraged from taking legally-compliant meal and rest breaks because of the time pressure to
19 finish the delivery of packages.

20 39. Defendants require drivers who do not have their own delivery vehicles to rent vans
21 bearing the OnTrac logo and/or rent vehicles that had to bear a magnetic OnTrac logo from
22 Defendants and use them to deliver their assigned packages. Defendants Gonzalez and OnTrac
23 required Plaintiff to pay \$200 weekly to rent a van to use for deliveries.

24 40. Defendants require drivers to purchase OnTrac uniforms and wear them while
25 performing their jobs.

1 41. Drivers' job responsibilities—delivering packages from sorting centers to
2 customers—are at the core of Defendants' business, that is, delivering packages to residential
3 customers.

4 42. OnTrac drivers do not need any special skills other than driving and/or the ability to
5 deliver parcels to perform their jobs. Given the number of days and hours per week they work for
6 Defendants, drivers generally cannot and do not perform work for other entities.

7 43. Defendants require drivers to pay for their own gas, vehicle maintenance and repairs,
8 vehicle insurance, and package insurance and do not reimburse them for these amounts. For drivers
9 who have their own delivery vehicles, Defendants additionally do not reimburse them for mileage.

10 44. Defendants failed to maintain complete and accurate time records for Plaintiff and
11 other delivery drivers. Plaintiff and other delivery drivers were not provided wage statements
12 which set forth their hours worked or their rates, and the records of the deliveries they made were
13 often missing stops, which meant Plaintiff and other delivery drivers were not paid at all for some
14 deliveries and therefore were not paid for all time worked.

15 45. At the South San Francisco sorting facility, OnTrac employs a warehouse operations
16 manager, Jude [last name unknown], who has authority over Defendant Gonzalez, Cidrao De
17 Araujo and all delivery drivers. OnTrac exercises control over the wages, hours, and working
18 conditions of Plaintiff and other drivers not only through its contractual relationships with
19 Defendants Gonzalez and Cidrao De Araujo and other subcontractors, but also through physical
20 oversight of their operations. Moreover, OnTrac's warehouse operations manager exercises direct
21 control over hiring decisions. After Plaintiff's employment was terminated by Defendant Gonzalez,
22 before Defendant Cidrao De Araujo could hire Plaintiff, Plaintiff and Defendant Cidrao De Araujo
23 were required to meet with OnTrac's warehouse operations manager to discuss the previous
24 termination. Defendant Cidrao De Araujo lacked the authority to hire Plaintiff without OnTrac's
25 approval and hired Plaintiff only after authorized to do so by OnTrac's warehouse operations
26 manager. Upon information and belief, OnTrac employs warehouse operations managers in all of
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1 its sorting facilities in California who similarly exercise oversight over subcontractors and delivery
2 drivers, including control over hiring decisions.

3 46. Between 2013 and 2022, OnTrac defended against class and group claims by then-
4 current and former delivery drivers in California for, among other things, misclassifying them as
5 independent contractors and failing to pay them the minimum wage, failing to pay them overtime,
6 and failing to provide meal and rest periods. *Thomas Lewis v. Express Messenger Systems, Inc.*,
7 *dba OnTrac*, Los Angeles County Superior Court Case No. BC501521; *Eliseo Leal v. Express*
8 *Messenger Systems, Inc., dba OnTrac*, Los Angeles County Superior Court Case No. BC509904.
9 OnTrac ultimately settled those claims for \$10.5 million.

10 47. In 2019, OnTrac, dba Express Messenger Systems, and Mr. Gonzalez were found to
11 have jointly employed delivery driver Juan Jose Reyes at the South San Francisco sorting center,
12 and to have misclassified him as an independent contractor after a trial in San Francisco Superior
13 Court.

14 48. As of August 2024, at least four (4) wage claims have been filed against Defendant
15 Gonzalez with the California Department of Industrial Relations in the “Couriers and Express
16 Delivery Services” industry.

17 49. Defendants have chosen despite these claims to continue to willfully misclassify
18 Plaintiff and the Class as independent contractors in order to avoid their obligations as employers,
19 including the cost of delivery vehicles and overtime premium pay.

20 50. As a result of Defendants’ pattern and practice of failing to pay the compensation
21 due to them, Plaintiff and members of the putative Plaintiff Class have been and continue to be
22 systematically deprived of the wages to which they are entitled by law, to the detriment of
23 themselves, their families, and Defendants’ competitors, who face unfair competition as the result
24 of Defendants’ unlawful business practices.

25 **ALLEGATIONS FOR CLASS ACTION**

26 51. Plaintiff brings this action on behalf of himself, and all others similarly situated
27 pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3). The Class that Plaintiff seeks to
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1 represent is defined as follows:

2 All individuals who are currently employed, or formerly have been engaged,
3 suffered, or permitted to work delivering packages for OnTrac in California at any
4 time from four years before the filing of this Complaint through the date of judgment
5 in this action.

6 52. This action has been brought and may properly be maintained as a class action under
7 Federal Rule of Civil Procedure Rule 23 because the class is so numerous that joinder is
8 impracticable, there are questions of law and fact common to the class, the claims of the
9 representative party are typical of the claims of the class, and the representative party will fairly and
10 adequately represent the interests of the class:

- 11 a. Numerosity: The potential members of the Class as defined are so numerous that
12 joinder of all the members of the Class is impracticable. Upon information and
13 belief, at least 150 delivery drivers are employed at the South San Francisco
14 sorting facility and Defendant OnTrac operates additional sorting facilities in the
15 State of California.
- 16 b. Commonality: There are questions of law and fact common to Plaintiff and the
17 Class that predominate over any questions affecting only individual members of
18 the Class. These common questions of law and fact include, without limitation:
- 19 i. Whether Defendants have violated and continue to violate the California
20 Labor Code and applicable IWC Wage Orders;
- 21 ii. Whether Defendants have violated California Labor Code § 226.8 by
22 willfully misclassifying Plaintiff and the Class as independent
23 contractors;
- 24 iii. Whether Defendants have violated California Labor Code §§ 204 and
25 1194 by failing to pay Plaintiff and other members of the proposed Class
26 the applicable straight-time rates for all regular (non-overtime) hours
27 worked;

- 1 iv. Whether Defendants have violated Section 3 of IWC Wage Order 9-2001
2 and California Labor Code § 510 by failing to pay Plaintiff and other
3 members of the proposed Class who worked in excess of forty (40) hours
4 per week and/or eight (8) hours a day the applicable overtime premium
5 rates for all overtime hours worked;
- 6 v. Whether Defendants' time keeping policies and practices have violated
7 the California Labor Code and/or the California Unfair Competition Law
8 by failing to accurately record the actual hours worked, including the start
9 and end time for each workday, meal periods, and total daily hours
10 worked by Plaintiff and the Class in violation of California Labor Code
11 §§ 226 and 1174, and the IWC Wage Orders;
- 12 vi. Whether Defendants have violated Labor Code § 2802 by failing to
13 reimburse or indemnify employees for their uniforms, device rent, gas,
14 vehicle repairs, vehicle insurance, package insurance, mileage, and other
15 business-related expenses they have incurred in the course of performing
16 their jobs;
- 17 vii. Whether Defendants have engaged in a continuing policy, pattern, or
18 practice of denying their non-exempt hourly employees the bona fide
19 meal and rest periods to which they are entitled in violation of California
20 Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001;
- 21 viii. Whether Defendants have violated California Labor Code §§ 201-203 by
22 failing to pay delivery drivers the wages owed to them upon termination
23 or quit;
- 24 ix. Whether Defendants' payroll policies and practices have violated the
25 California Labor Code, applicable Wage Orders, and/or the California
26 Unfair Competition Law by resulting in the provision of wage statements
27 that do not accurately reflect employee earnings and/or other items listed
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- 1 in California Labor Code § 226 and applicable Wage Orders;
- 2 x. Whether Defendants have violated California Labor Code § 204, by
- 3 failing to pay delivery drivers their wages at least twice during each
- 4 month on days designated in advance by the employer;
- 5 xi. Whether Defendants' policies and practices have constituted unlawful,
- 6 unfair, or fraudulent business practices in violation of California Unfair
- 7 Competition Law;
- 8 xii. Whether Defendants violated the California Private Attorneys General
- 9 Act of 2004 (Labor Code § 2698, *et seq.*) based on the same or similar
- 10 facts and/or claims alleged in the PAGA letter sent to the LWDA by
- 11 Plaintiff prior to the Action, as well as any claims that could have been
- 12 pled under the California Labor Code and California Industrial Welfare
- 13 Commission Wage Orders; and
- 14 xiii. The proper formula for calculating restitution, damages, and waiting time
- 15 penalties owed to Plaintiff and the Class as alleged herein.
- 16 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendants'
- 17 common policies, practices, and course of conduct are in violation of the law as
- 18 alleged herein and have caused Plaintiff and the Class to sustain the same or
- 19 similar injuries and damages. Plaintiff's claims are thereby representative of and
- 20 co-extensive with the claims of the Class.
- 21 d. Adequacy: Plaintiff is a member of the Class, does not have a conflict of interest
- 22 with other Class Members, and will prosecute the case vigorously on behalf of
- 23 the Class. Plaintiff will fairly and adequately represent and protect the interests
- 24 of the members of the Class. Plaintiff has retained counsel competent and
- 25 experienced in complex employment class action litigation.
- 26 e. Superiority: The nature of this action and the nature of laws available to Plaintiff
- 27 make use of the class action format the superior and appropriate procedure to
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afford relief for the wrongs alleged herein. Individual joinder of all the members of the Class is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for those parties and the judicial system.

f. Injunctive Relief: Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages Due

(California Labor Code §§ 204 and 1194)

(Against all Defendants on behalf of Plaintiff and the Class)

53. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

54. California Labor Code § 204(a) provides that wages for all work performed must be paid "twice during each calendar month, on days designated in advance by the employer as the regular paydays."

55. California Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

56. California Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

57. Defendants paid Plaintiff and Class Members per stop, at times in addition to a daily

1 base rate and at times not, rather than the applicable minimum wage for all the hours they worked.
2 In addition, Defendants failed to pay Plaintiff and Class Members for all deliveries completed. As a
3 result, Defendants deny Plaintiff and the Class compensation for all hours worked, including
4 minimum wages.

5 58. Defendants have knowingly and willfully refused to perform their obligations to
6 provide Plaintiff and the Class with compensation for all time worked as required by California law.
7 Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and
8 deliberate intention of injuring Plaintiff and the Class, with improper motives amounting to malice,
9 and in conscious disregard of the rights of Plaintiff and the Class. Plaintiff and the Class are thus
10 entitled to recover nominal, actual and compensatory damages in amounts according to proof at
11 time of trial.

12 59. As a proximate result of the aforementioned violations, Defendants have damaged
13 Plaintiff and the Class in amounts to be determined according to proof at the time of trial, but in an
14 amount in excess of the jurisdictional requirements of this Court.

15 60. California Labor Code § 1194.2(a) provides as follows:

16 In any action under Section [1194] to recover wages because of the payment of a wage less
17 than the minimum wage fixed by an order of the commission or by statute, an employee
18 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

19 61. Defendants are liable to Plaintiff and the Class for the unpaid compensation with
20 interest thereon, as well as liquidated damages in an amount equal to the unpaid compensation with
21 interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set
22 forth below.

23 62. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
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SECOND CAUSE OF ACTION

Failure to Pay Overtime & Double Time Wages

(California Labor Code § 510; IWC Wage Order 9-2001)

(Against all Defendants on behalf of Plaintiff and the Class)

63. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

64. California Labor Code § 510(a) provides as follows:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

65. IWC Wage Order 9-2001 Section 3(A)(1) states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

1 66. California Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
3 the legal minimum wage or the legal overtime compensation applicable to the employee is
4 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
 wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and
 costs of suit.

5 67. California Labor Code § 200 defines wages as "all amounts for labor performed by
6 employees of every description, whether the amount is fixed or ascertained by the standard of time,
7 task, piece, commission basis or other method of calculation." All such wages are subject to
8 California's overtime and double time requirements, including those set forth above.

9 68. Defendants did not compensate Plaintiff and the Class at the applicable overtime rate
10 for hours worked in excess of eight hours per day or 40 hours per week, regardless of how many
11 hours they worked. As a result, Plaintiff and Class Members have worked overtime hours for
12 Defendants without being paid overtime premiums in violation of the California Labor Code, IWC
13 Wage Orders, and other applicable law.

14 69. Defendants have knowingly and willfully refused to perform their obligations to
15 provide Plaintiff and the Class with compensation for all premium wages for overtime work as
16 required by California law. As a proximate result of the aforementioned violations, Defendants
17 have damaged Plaintiff and the Class in amounts to be determined according to proof at the time of
18 trial, but in an amount in excess of the jurisdictional requirements of this Court. Defendants are
19 therefore liable to Plaintiff, on behalf of the Class, for the unpaid overtime and double time
20 compensation with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees
21 and costs as set forth below.

22 70. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
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THIRD CAUSE OF ACTION

Failure to Provide Meal and Rest Periods

(California Labor Code §§ 226.7 and 512; IWC Wage Order 9-2001)

(Against all Defendants on behalf of Plaintiff and the Class)

71. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

72. At all times relevant herein, California Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001 prohibit employers from employing an employee for more than five hours without providing, authorizing, permitting, and/or making available a meal period of not less than thirty minutes in which the employee is completely relieved of all duties, and from employing an employee for more than ten hours per day without providing, authorizing, permitting, and/or making available a second meal period of not less than thirty minutes in which the employee is completely relieved of all duties.

73. California Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001 also require employers to provide, authorize, permit, and/or make available to employees ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal and/or rest period is counted as time worked under IWC Wage Order 9-2001.

74. Under California Labor Code §226.7(b) and IWC Wage Order 9-2001, an employer that fails to provide, authorize, permit, and/or make available a required off-duty meal period must pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal period was not provided. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee’s regular rate of compensation for each workday that the rest period was not provided.

75. Defendants failed to provide, authorize, permit, and/or make available bona fide off-duty meal and rest periods to Plaintiff and the Class. As a result, Plaintiff and Class Members are

entitled to the relief provided by California Labor Code § 226.7(b). Furthermore, Defendants required Plaintiff and the Class to perform work-related activities during their meal and rest periods. Consequently, Defendants have knowingly and willfully refused to perform their obligations to provide, authorize, permit, and/or make available to Plaintiff and the Class the full meal and rest periods to which they are entitled under California law. Defendants committed the acts alleged herein with the wrongful and deliberate intention of injuring Plaintiff and the Class, with improper motives amounting to malice, and in conscious disregard of the rights of Plaintiff and the Class. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiff and the Class in amounts to be determined according to proof at the time of trial, but in an amount in excess of the jurisdictional requirements of this Court. Plaintiff and the Class are thus entitled to recover nominal, actual, and compensatory damages in amounts according to proof at time of trial.

76. Defendants' conduct described herein violates California Labor Code §§ 226.7 and 512 and Wage Order 9-2001. Therefore, Plaintiff and the Class are entitled to the relief provided in California Labor Code § 226.7(b) and Wage Order 9-2001, damages, restitution for the failure to provide meal and rest periods, plus interest, applicable civil penalties, attorneys' fees, expenses and costs of suit.

77. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION

Failure to Reimburse for Necessary Business Expenditures (California Labor Code §§ 2802 and 221; IWC Wage Order 9-2001) (Against all Defendants on behalf of Plaintiff and the Class)

78. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

79. California Labor Code § 221 provides that it shall be unlawful for any employer to collect or receive any part of wages theretofore paid by said employer to said employee.

80. California Labor Code § 2802 provides that an employer must reimburse an employee for necessary expenditures and losses incurred by an employee in the direct consequence

1 of the discharge of his or her duties.

2 81. Plaintiff alleges that, while acting on the direct instruction of Defendants and
3 discharging his duties for them, Defendants have required Plaintiff and members of the Class to
4 incur expenses relating to uniforms, device rent, gas, vehicle repairs, vehicle insurance, package
5 insurance, mileage, and other business-related expenses to perform tasks and/or discharge their job
6 duties for Defendants, without being reimbursed or indemnified for said expenses.

7 82. Because of Defendants' failure to comply with the provisions of IWC Wage Order 9-
8 2001 and California Labor Code §§ 221 and 2802, Plaintiff and the Class have suffered damages.
9 Plaintiff and the Class seek reimbursement for the necessary expenditures they have incurred in
10 direct consequence of the discharge of their duties in an amount according to proof at time of trial,
11 with interest thereon, costs, applicable civil penalties and attorneys' fees pursuant to California
12 Labor Code § 2802.

13 83. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

14 **FIFTH CAUSE OF ACTION**

15 **Unpaid Wages and Waiting Time Penalties**

16 **(California Labor Code §§ 201-203)**

17 **(Against all Defendants on behalf of Plaintiff and the Class)**

18 84. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
19 forth herein.

20 85. California Labor Code § 201(a) provides:

21 If an employer discharges an employee, the wages earned and unpaid at the time of
22 discharge are due and payable immediately.

23 86. California Labor Code § 202 provides:

24 If an employee not having a written contract for a definite period quits his or her
25 employment, his or her wages shall become due and payable not later than 72 hours
26 thereafter, unless the employee has given 72 hours previous notice of his or her intention to
27 quit, in which case the employee is entitled to his or her wages at the time of quitting.

87. Plaintiff and Class Members who left Defendants' employment within the statutory period are entitled to their earned wages. As a result of Defendants' failure to pay members of the Class for all hours worked, including minimum wage, overtime and double time hours, and due to Defendants' failure to provide meal and rest periods and reimbursement for expenses, Defendants have willfully refused and continue to refuse to pay Plaintiff and Class Members all the wages that were due and owing to them upon termination of employment. As a result of Defendants' actions, Plaintiff and the Class have suffered and continue to suffer substantial losses, including lost earnings and interest thereon.

88. Defendants' willful failure to pay Plaintiff and Class Members the wages due and owing to them constitutes a violation of California Labor Code §§201 and 202. As a result, Defendants are liable to Plaintiff and Class Members for all unpaid wages that should have been paid pursuant to California Labor Code §§ 201 and 202, plus interest thereon.

89. California Labor Code § 203 provides that if an employer violates California Labor Code §§ 201 or 202, an employee's wages will continue as a penalty up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who left Defendants' employment during the statutory period are entitled to waiting time penalties, plus interest thereon, pursuant to California Labor Code § 203.

90. Plaintiff and the Class are entitled to an award of attorneys' fees and costs as set forth below.

91. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION

Failure to Provide Itemized Wage Statements

(California Labor Code § 226)

(Against all Defendants on behalf of Plaintiff and the Class)

92. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

1 93. California Labor Code § 226(a) provides:

2 Every employer shall, semimonthly or at the time of each payment of wages, furnish each of
3 his or her employees, either as a detachable part of the check, draft, or voucher paying the
4 employee's wages, or separately when wages are paid by personal check or cash, an accurate
5 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, except for any employee whose compensation is solely based on a salary and who
7 is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable
8 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
9 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
10 provided that all deductions made on written orders of the employee may be aggregated and
11 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
12 employee is paid, (7) the name of the employee and his or her social security number, (8) the
13 name and address of the legal entity that is the employer, and (9) all applicable hourly rates
14 in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee. The deductions made from payments of wages shall be
16 recorded in ink or other indelible form, properly dated, showing the month, day, and year,
17 and a copy of the statement or a record of the deductions shall be kept on file by the
18 employer for at least four years at the place of employment or at a central location within the
19 State of California.

20 94. California Labor Code § 226(e) provides:

21 An employee suffering injury as a result of a knowing and intentional failure by an employer
22 to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty
23 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
24 (\$100) per employee for each violation in a subsequent pay period, not exceeding an
25 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
26 reasonable attorney's fees.

27 95. Plaintiff and the Class seek to recover actual damages, penalties, costs, and
28 attorneys' fees and costs under this section.

29 96. Defendants have failed and continue to fail to provide timely, accurate itemized
30 wage statements to Plaintiff and the Class in accordance with California Labor Code § 226(a) and
31 IWC Wage Order 9-2001. Furthermore, the wage statements Defendants have provided to their
32 employees, including to Plaintiff and the Class, do not accurately reflect the actual hours worked
33 and wages earned.

34 97. Defendants are liable to Plaintiff and the Class as alleged herein for the amounts
35 described above, in addition to civil penalties, with interest thereon. Furthermore, Plaintiff and the
36 Class are entitled to an award of attorneys' fees and costs as set forth below.

1 98. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

2 **SEVENTH CAUSE OF ACTION**

3 **Individual Liability for Labor Code Violations**

4 **(California Labor Code § 558.1)**

5 **(Against Defendants Gonzalez and Cidrao De Araujo on behalf of Plaintiff and the Class)**

6 99. Plaintiff re-alleges and incorporates by reference the allegations contained in the
7 preceding paragraphs as though fully set forth herein.

8 100. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of
9 an employer[] who violates, or causes to be violated, any provision regulating minimum wages or
10 hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor Code]
11 Sections 203, 226, 226.7, 1193.6, 1194, or 2802.”

12 101. Labor Code § 558.1(b) provides that an “other person” is “a natural person who is an
13 owner, director, officer, or managing agent” of an employer.

14 102. Defendants Jesus Fernando Gonzalez and Leonardo Cidrao De Araujo violated or
15 caused to be violated the provisions of IWC Wage Order 9-2001 governing wages or hours and
16 days or work, as well as Labor Code §§ 203, 226, and/or 1194.

17 103. Defendants Jesus Fernando Gonzalez and Leonardo Cidrao De Araujo are
18 individually liable for the violations of IWC Wage Order 9-2001 and Labor Code §§ 203, 226, and
19 1194 alleged above because they are owners, directors, officers, or managing agents of the
20 Defendant entities listed herein.

21 104. Defendants Gonzalez and Cidrao De Araujo each caused the violation of Labor Code
22 §§ 203, 226, 226.7, 1193.6, 1194, and 2802 by implementing and enforcing policies and procedures
23 regarding compensation established by them and/or Defendant OnTrac, including but not limited to
24 requiring delivery drivers to pay rent for vehicles and scanners, and to pay for their own vehicle
25 insurance and gasoline costs, by requiring delivery drivers to work more than eight hours in a day or
26 forty in a week without overtime premium pay, by failing to provide meal and rest breaks, failing to
27 provide accurate wage statements, failing to maintain accurate time and payroll records, failing to

1 pay at least minimum wage for all hours worked, and failing to pay all wages due upon discharge.

2 105. Plaintiff requests damages, injunctive relief, attorneys' fees and costs, interest, and
3 all penalties provided for by IWC Wage Order 9-2001 and Labor Code §§ 203, 226, and 1194.

4 **EIGHTH CAUSE OF ACTION**

5 **Violation of California Business and Professions Code §§ 17200, *et seq.***

6 **(Against all Defendants on behalf of Plaintiff and the Class)**

7 106. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
8 forth herein.

9 107. California Business and Professions Code §§ 17200 *et. seq.* (also referred to herein
10 as the "Unfair Competition Law" or "UCL") prohibits unfair competition in the form of any
11 unlawful, unfair or fraudulent business act or practice.

12 108. California Business and Professions Code § 17204 allows a person injured by unfair
13 business acts or practices to prosecute a civil action for violation of the Unfair Competition Law.

14 109. California Labor Code § 90.5(a) states it is the public policy of California to
15 vigorously enforce minimum labor standards in order to ensure employees are not required to work
16 under substandard and unlawful conditions, and to protect employers who comply with the law
17 from those who attempt to gain competitive advantage at the expense of their workers by failing to
18 comply with minimum labor standards.

19 110. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
20 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
21 defined by the Unfair Competition Law by engaging in the unlawful, unfair and fraudulent business
22 practices and acts described in this Complaint, including, but not limited to violations of California
23 Labor Code §§ 201-204, 221, 226, 226.3, 226.7, 226.8, 510, 512, 558.1, 1194 and 2802, and
24 provisions of IWC Wage Order 9-2001.

25 111. The violations of these laws and regulations, as well as of the fundamental California
26 public policies protecting workers and requiring payment of wages for all work performed,
27 providing workers with adequate meal and rest periods, and discouraging unfair labor practices,
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1 serve as unlawful predicate acts and practices for purposes of Business and Professions Code
2 §§ 17200 *et. seq.*

3 112. The acts and practices described above constitute unfair, unlawful and fraudulent
4 business practices, and unfair competition, within the meaning of Business and Professions Code
5 §§ 17200 *et. seq.*, in that, for the reasons set forth above, said acts and practices violate explicit
6 provisions of the California Labor Code and/or Wage Orders, including, without limitation, Wage
7 Order 9-2001. Defendants have obtained a significant unfair competitive advantage over law-
8 abiding employers and competitors and engaged in unfair competition, through its acts and practices
9 of denying Plaintiff and the Class meal and rest periods, full compensation for all hours worked,
10 including overtime and double time compensation for overtime and double time hours worked,
11 compensation at or above the minimum wage, and reimbursement of expenses.

12 113. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
13 and the Class have suffered a loss of money and property, in the form of unpaid wages, which are
14 due and payable to them.

15 114. California Business and Professions Code § 17203 provides that a court may make
16 such orders or judgments as may be necessary to prevent the use or employment by any person of
17 any practice that constitutes unfair competition. Injunctive relief is necessary and appropriate to
18 prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and business
19 practices alleged above.

20 115. California Business and Professions Code § 17203 provides that the Court may
21 restore to any person in interest any money or property that may have been acquired by means of
22 such unfair competition. Plaintiff and the Class are entitled to restitution for all wages and
23 payments unlawfully withheld from employees during the four-year period prior to the filing of this
24 Complaint pursuant to California Business and Professions Code § 17203.

25 116. California Business and Professions Code § 17202 provides: “Notwithstanding
26 Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty,
27 forfeiture, or penal law in a case of unfair competition.” Plaintiff and the Class are entitled to
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1 enforce all applicable penalty provisions of the California Labor Code pursuant to California
2 Business and Professions Code § 17202.

3 117. Plaintiff's success in this action will enforce important rights affecting the public
4 interest, and in that regard, Plaintiff sues on behalf of himself as well as others similarly situated.

5 118. Plaintiff has no adequate remedy at law and therefore seeks equitable relief. Plaintiff
6 and the Class seek and are entitled to unpaid wages, restitution, any applicable civil penalties,
7 declaratory relief, other injunctive relief that Plaintiff may more precisely specify at a later stage of
8 this litigation, and all other equitable remedies owing to them.

9 119. Plaintiff herein takes upon himself the enforcement of these laws and lawful claims.
10 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
11 public right, and it would be contrary to the interests of justice to penalize Plaintiff and the Class by
12 forcing them to pay attorneys' fees from the recovery in this action. Plaintiff and the Class request
13 an award of attorneys' fees, costs and expenses pursuant to Code of Civil Procedure § 1021.5 and as
14 otherwise permitted by statute. Wherefore, Plaintiff and the Class request relief as hereinafter
15 provided.

16 **NINTH CAUSE OF ACTION**

17 **Violation of California Private Attorneys General Act ("PAGA")**

18 **(California Labor Code §§ 2698 *et seq.*)**

19 **(Against all Defendants on behalf of Plaintiff and the Class)**

20 120. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
21 forth herein.

22 121. Under PAGA, California Labor Code §§ 2698 *et seq.*, any aggrieved employee may
23 bring a representative action as a private attorney general on behalf of the general public, including
24 all other aggrieved employees, to recover civil penalties for their employer's violations of the
25 California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
26 relief available under the Labor Code and must be allocated 65% to the State of California and 35%
27 to the aggrieved employees, pursuant to California Labor Code § 2699(m).

122. Pursuant to California Labor Code § 1198, Defendants' employment of Plaintiff and others similarly situated for longer hours than those fixed by IWC Wage Order 9-2001 or under conditions of labor prohibited by IWC Wage Order 9-2001 is unlawful and constitutes a violation of the California Labor Code, actionable under PAGA. Pursuant to California Labor Code § 1199, it is unlawful for Defendants to have violated, or refused or neglected to have complied with, any other provision of IWC Wage Order 9-2001 as alleged herein.

123. Plaintiff alleges, on behalf of himself and all similarly situated aggrieved employees in the Class, as well as the general public of the State of California, that Defendants have violated the following provisions of the California Labor Code that are actionable through PAGA, as previously alleged herein: California Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802. Each of these violations entitles Plaintiff, as a private attorney general, to recover the applicable statutory civil penalties on his own behalf and on behalf of all aggrieved employees, and on behalf of the general public, including but not limited to penalties pursuant to California Labor Code §§ 210, 225.5, 226.3, 226.8, 558, 1174.5, 1197.1, 1199, 2802, and subsection 20 of IWC Wage Order 9-2001.

124. On June 20, 2024, Plaintiff provided notice via online submission to the California Labor and Workforce Development Agency ("LWDA"), and via certified mail to all Defendants. The LWDA has not notified the Plaintiff that it does or does not intend to investigate the alleged violations. A true and correct copy of Plaintiff's June 20, 2024, submission to the LWDA is attached hereto as Exhibit A and incorporated herein.

125. Under PAGA, Plaintiff and the State of California are entitled to recover the maximum civil penalties permitted by law for the violations of the California Labor Code and IWC Wage Order 9-2001 that are alleged in this Complaint.

PRAYER FOR RELIEF

Wherefore, Plaintiff and the Class pray for relief as follows:

1. For an order certifying this case as a class action, appointing Plaintiff as the representative of the Class, and appointing Plaintiff's attorneys, The Villegas Law Firm, APC; Katz

1 Banks Kumin LLP; and Community Legal Services in East Palo Alto as Class Counsel;

2 2. For a declaratory judgment that Defendants have violated the California Labor Code,
3 IWC Wage Order 9-2001 and public policy as alleged herein;

4 3. For a declaratory judgment that Defendants have violated Business and Professions
5 Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the California Labor Code,
6 IWC Wage Order 9-2001, and California public policy protecting workers and prohibiting work
7 without full and proper compensation for work performed, adequate meal and rest periods, and
8 reimbursement for necessary work expenses;

9 4. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants
10 from committing in the future those violations of law herein alleged;

11 5. For an order awarding Plaintiff and the Class compensatory and liquidated damages,
12 including lost wages, earnings, and other employee benefits and all other sums of money owed to
13 Plaintiff and the Class, together with interest on these amounts, according to proof;

14 6. For an equitable accounting to identify, locate and restore to all current and former
15 employees the restitution they are due under California Business and Professions Code §§ 17202-
16 17203, with interest thereon;

17 7. For an award of restitution, according to proof, under the California Labor Code and
18 under California Business and Professions Code §§ 17200-17205;

19 8. For an order imposing all statutory and/or civil penalties provided by law, including
20 but not limited to, penalties under California Labor Code §§ 201-203, 225.5, 226(e), 226.3, 226.7,
21 226.8, 558, 1174.5, 1197.1, 1199, 2802, 2699 (a) and (f) and subsection 20 of IWC Wage Order 9-
22 2001, together with interest on these amounts;

23 9. Pre-judgment and post-judgment interest, as provided by law;

24 10. For an award of reasonable attorneys' fees as provided by California Labor Code
25 §§ 218.5, 226(e), and 1194; California Code of Civil Procedure § 1021.5; and/or other applicable
26 law;

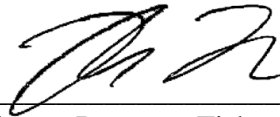
27 11. For all costs of suit; and
28

1 12. For such other and further legal and equitable relief as this Court deems necessary,
2 just and proper.

3
4
5 Dated: January 30, 2025

Respectfully submitted,

KATZ BANKS KUMIN LLP



Rebecca Peterson-Fisher (State Bar No. 255359)
235 Montgomery Street, Suite 665
San Francisco, CA 94104
Tel: (415) 813-3260
Fax: (415) 813-2495
Email: peterson-fisher@katzbanks.com

Jessica Westerman (*pro hac vice* application
forthcoming)
11 Dupont Circle, Suite 600
Washington, D.C. 20036
Tel: (202) 299-1140
Fax: (202) 299-1148
Email: westerman@katzbanks.com

THE VILLEGAS LAW FIRM, APC
Virginia Villegas (State Bar No. 179062)
1388 Sutter Street, Suite 903
San Francisco, CA 94109
Tel: (415) 989-8000
Fax: (415) 989-8028
Email: virginia@e-licenciados.com

**COMMUNITY LEGAL SERVICES IN EAST
PALO ALTO**
Jennifer Smith (State Bar No. 319852)
1861 Bay Road
East Palo Alto, CA 94303
Tel: (650) 204-9065
Fax: (866) 688-5204
Email: jsmith@clsepa.org

Counsel for Plaintiff and the Proposed Class